

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – LOS ANGELES

In the Matter of)	Case No.: 12-PM-11017-RAH (S192444)
)	
RITA ANN KAHLENBERG)	ORDER GRANTING MOTION TO
)	REVOKE PROBATION; DISCIPLINE
Member No. 200518)	RECOMMENDATION; INVOLUNTARY
)	INACTIVE ENROLLMENT ORDER.
<u>A Member of the State Bar.</u>)	

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Respondent Rita Ann Kahlenberg did not participate in this proceeding although she was properly served with the motion to revoke probation by certified mail, return receipt requested, and by regular mail at her State Bar membership records address.

On June 28, 2011, the California Supreme Court filed an order, S192444, accepting the State Bar Court's discipline recommendation, including specified probation conditions, in case no. 09-O-12700 (09-O-12843; 09-O-13165; 09-O-15002). It became effective on July 28, 2011 (Rule 9.18(a), California Rules of Court) and was properly served on respondent.¹ A copy of the stipulation and the State Bar Court's order approving same had previously been properly served on respondent on March 1, 2011.

¹In the absence of evidence to the contrary, the court finds that the Clerk of the Supreme Court performed his or her duty by transmitting a copy of the Supreme Court's order to respondent immediately after its filing. (Rule 8.532(a), Cal. Rules of Court; Evid. C. §664; *In Re Linda D.* (1970) 3 Cal.App.3d 567, 571.)

On July 18 and October 21, 2011, the Office of Probation sent respondent reminder letters regarding the probation conditions, among other things, at her official address. Neither letter was returned as undeliverable or for any other reason.

The court finds by a preponderance of the evidence pursuant to Business and Professions Code section 6093, subdivisions (b) and (c) and rule 5.311, Rules Proc. of State Bar,² that respondent did not comply with the following probation conditions:

(a) During the period of probation, submitting a written report to the Office of Probation on January 10, April 10, July 10 and October 10 of each year or part thereof during which the probation is in effect stating under penalty of perjury that he has complied with all provisions of the State Bar Act and Rules of Professional Conduct during said period (quarterly report).

Respondent did not submit the quarterly report due on October 10, 2011, until October 17, 2011, and did not submit the one due on January 10, 2012; and

(b) Paying restitution to Zulma Rauda and Stacie Jennings in the amount of \$2,000 and \$3,500, respectively, in \$100 minimum payments due by the 15th of the month and submitting satisfactory proof of such payments to the Office of Probation with each quarterly report or as otherwise directed. No proof of restitution has been provided to the Office of Probation with regard to any payee or in any amount.

AGGRAVATING AND MITIGATING FACTORS

Respondent has one prior record of discipline which included, among other things, two years' stayed suspension and three years' probation subject to conditions. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct,³ std. 1.2(b)(i).) In S192444,

² Future references to section and rule are to the Business and Professions Code and Rules of Professional Conduct, respectively.

³ Future references to standard or std. are to this source.

respondent and the State Bar stipulated to culpability in four client matters for violations of rules 3-110(A) (not performing competently - two counts), 3-700(A)(2) (improper withdrawal - three counts), 3-700(D)(1) (not returning client all papers and property - one count) , 3-700(D)(2) (not returning unearned fees - two counts) and 4-100(B)(3) (not maintaining records or rendering accounts of client funds or property - one count) as well as sections 6068, subdivisions (i) (not cooperating with disciplinary investigation - four counts) and (m) (not communicating - two counts.) The parties stipulated to multiple acts of misconduct in aggravation and no prior discipline in mitigation.⁴

Respondent engaged in multiple acts of misconduct. (Std. 1.2(b)(ii).)

Respondent significantly harmed the administration of justice as her noncompliance with the probation conditions made it more difficult for the State Bar to appropriately monitor her in seeking to insure the protection of the public and the courts. (Std. 1.2(b)(iv).)

Further, she demonstrated indifference toward rectification of or atonement for the consequences of her misconduct by not complying despite reminders from the Office of Probation. (Std. 1.2(b)(v).)

It is respondent's burden to establish mitigating factors, but, since she did not participate in this proceeding, none is found.

DISCUSSION

The extent of the discipline to recommend is dependent, in part, on the seriousness of the probation violation and respondent's recognition of the misconduct and the efforts to comply with the conditions. (*In the Matter of Potack* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 525, 540.) Having considered these factors and the Office of Probation's contentions, the court believes that actual suspension for one year and until respondent makes restitution and complies

⁴ The court judicially notices the prior disciplinary record.

with standard 1.4(c)(ii) is sufficient to protect the public in this instance. Respondent was aware of the terms and conditions of her disciplinary probation, yet did not comply with them despite reminders from Office of Probation. Accordingly, the motion to revoke probation is GRANTED.

DISCIPLINE RECOMMENDATION

The court recommends that the probation of respondent Rita Ann Kahlenberg, previously ordered in Supreme Court case matter S192444 (State Bar Court case no. 09-O-12700 (09-O-12843; 09-O-13165; 09-O-15002), be revoked; that the previous stay of execution of the suspension be lifted, and that respondent is suspended from the practice of law for a minimum of one year, and that she will remain suspended until the following requirements are satisfied:⁵

- i. She makes restitution to Zulma Rauda in the amount of \$2,000 (or reimburses the Client Security Fund, to the extent of any payment from the fund to Zulma Rauda, in accordance with Business and Professions Code section 6140.5) and furnishes satisfactory proof to the State Bar's Office of Probation in Los Angeles;
- ii. She makes restitution to Stacie Jennings in the amount of \$3,500 (or reimburses the Client Security Fund, to the extent of any payment from the fund to Stacie Jennings, in accordance with Business and Professions Code section 6140.5) and furnishes satisfactory proof to the State Bar's Office of Probation in Los Angeles; and
- iii. If she remains suspended for two years or more as a result of not satisfying the preceding conditions, she must also provide proof to the State Bar Court of her rehabilitation, fitness to practice and learning and ability in the general law before suspension will be terminated. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.4(c)(ii).)

It is also recommended that the Supreme Court order respondent to comply with rule 9.20(a) of the California Rules of Court within 30 calendar days after the effective date of the Supreme Court order in the present proceeding and to file the affidavit provided for in rule

⁵ This level of discipline is consistent with rule 5.312, Rules Proc. of State Bar.

9.20(c) within 40 calendar days after the effective date of the order showing respondent's compliance with said order.⁶

Within one year after the effective date of the discipline herein, respondent must submit to the Office of Probation satisfactory evidence of completion of the State Bar's Ethics School and passage of the test given at the end of that session. This requirement is separate from any Minimum Continuing Legal Education (MCLE) requirement, and respondent will not receive MCLE credit for attending Ethics School. (Rules Proc. of State Bar, rule 3201.)

It is not recommended that respondent be ordered to successfully complete the Multistate Professional Responsibility Examination as she was ordered to do so in Supreme Court order S192444 (State Bar Court case no. 09-O-12700 (09-O-12843; 09-O-13165; 09-O-15002).

COSTS

It is recommended that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10 and are enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment.

ORDER REGARDING INACTIVE ENROLLMENT

Respondent is involuntarily enrolled inactive pursuant to Business and Professions Code section 6007, subdivision (d). The requirements of section 6007, subdivision (d)(1) have been met: Respondent was subject to a stayed suspension, was found to have violated probation conditions, and it has been recommended that respondent be actually suspended due to said violations.

⁶Respondent is required to file a rule 9.20(c) affidavit even if she has no clients. (*Bercovich v. State Bar* (1990) 50 Cal.3d 116, 130.)

IT IS THEREFORE ORDERED that respondent Rita Ann Kahlenberg be involuntarily enrolled as an inactive member of the State Bar of California pursuant to Business and Professions Code section 6007, subdivision (d). This enrollment shall be effective three days following service of this order.

IT IS ALSO ORDERED that her inactive enrollment be terminated as provided by Business and Professions Code section 6007, subdivision (d)(2).

IT IS RECOMMENDED that respondent's actual suspension in this matter commence as of the date of her inactive enrollment pursuant to this order. (Business and Professions Code section 6007, subdivision (d)(3).)

Dated: May ____, 2012

RICHARD A. HONN
Judge of the State Bar Court